

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

<p>INSITUFORM TECHNOLOGIES, INC.,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>AMERICAN HOME ASSURANCE COMPANY,</p> <p style="text-align: center;">Defendant.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE NO. 04-10487 GAO</p>
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**AMERICAN HOME ASSURANCE COMPANY’S REPLY MEMORANDUM
IN FURTHER SUPPORT OF ITS MOTION TO STAY DISCOVERY**

Defendant American Home Assurance Company (“American Home”) submits this reply memorandum in further support of its Motion to Stay Discovery pending the resolution of the parties’ motions and cross-motions for summary judgment as to Count I (Breach of Contract) and Count II (Declaratory Judgment) of the Complaint of Plaintiff Insituform Technologies, Inc. (“Insituform”). This memorandum corrects and clarifies two possible misimpressions in Insituform’s response to American Home’s Motion to Stay Discovery. In further support of American Home’s Motion, American Home states that:

1. The purpose of the Motion is not to delay discovery, but rather to save the parties substantial costs and expense, to limit judicial resources, and to streamline or clarify legal issues remaining for trial, if any. As noted in American Home’s original memorandum in support of its motion, the outstanding discovery is not necessary to the disposition of the issues addressed American Home’s Motion for Summary Judgment, or to the liability issues raised in Insituform’s cross-motion.

2. American Home has not delayed discovery. As Insituform concedes, formal discovery did not begin until January 2006, largely due to Insituform's motion for summary judgment, which was filed twenty days after American Home filed its answer in this action.¹ American Home timely made its initial disclosures in accordance with the Joint Statement of the Parties Pursuant to Fed. R. Civ. P. 16.1, and at this time American Home does not plan to name a testifying expert in this action. As set forth in the Affidavit of Gregory P. Deschenes filed with the Court in connection with American Home's opposition to Insituform cross-motion for summary judgment, American Home has diligently pursued discovery. In fact, the parties' discovery in this matter has been comparable.

CONCLUSION

For each of the foregoing reasons in this and its earlier memorandum, American Home respectfully requests that its motion to stay discovery pending the resolution of American Home's motion for summary judgment be granted.

¹ Although the Court knows its own rulings on the parties' initial motions and cross-motions for summary judgment, American Home notes that the Court granted American Home's motion for summary judgment as to Count III of the Complaint, and did not simply "den[y] American Home's motion for summary judgment." (Insituform's Response to American Home's Motion to Stay Discovery, at 2.)

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Respectfully submitted,

AMERICAN HOME ASSURANCE COMPANY,

By its attorneys,

/s/ Kurt M. Mullen

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Dated: September 21, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each party by first class mail on September 21, 2006 and upon all parties registered for electronic notification via the Court's electronic filing system.

/s/ Kurt M. Mullen

Kurt M. Mullen